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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/785,237

02/24/2004

Yves Millou

1026-04

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35811 7590 01/22/2009  
IP GROUP OF DLA PIPER US LLP  
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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1611

MAIL DATE

DELIVERY MODE

01/22/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/785,237 | <b>Applicant(s)</b><br>MILLOU ET AL. |  |
|                              | <b>Examiner</b><br>GINA C. YU        | <b>Art Unit</b><br>1611              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on November 7, 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7, 8, 10, 14-16 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 8, 10, 14-16, 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |



### **DETAILED ACTION**

Receipt is acknowledged of amendment filed on November 7, 2008. Claim rejections made in the previous Office action dated November 7, 2008 are withdrawn in view of the claim amendment made by applicants. New rejections are made to address the new claim limitations.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-3, 8, 14-16, 20, 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amrita ("Helichrysum italicum", 1999, XP002224497) in view of Spina (Derwent ACC. No. 1999-471299, English abstract of FR 2774585).**

The Amrita online disclosure indicates that the essential oil of *Helichrysum italicum*, grown in high altitudes and dry, sunny spots in Mediterranean region, has been commercially available as of 1999. The reference teaches that the essential oil is distilled from the flower part, meeting instant claim 2. The reference also teaches that the essential oil is added to skin care products for skin-rejuvenating properties. See instant claim 8. The claimed methods of 14-16, 22-24 are obvious results of practicing the prior art as intended.

Amrita does not specifically mention the weight amount of the *Helichrysum italicum* oil in the prior art cosmetic compositions,

Spina discloses a topical composition for scalp, which comprises *Helichrysum italicum* essential oil. See Abstract, Novelty; instant claims 1, 2, and 8. The abstract

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also teaches that the composition has anti-inflammatory, wound healing, and antiseptic effect. The French patent indicates that 1.1-1.3 g of *Helichrysum italicum* essential oil is used in 30 g of total preparation, which is equivalent to 3.7-4.3 wt %. See '585, p. 1, line 21; p. 2, component 3.

Generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." See In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In this case, Applicant's declaration filed on April 9, 2008 indicates that two samples of the prior art products contain *Helichrysum italicum* essential oil containing 9.53 neryl acetate and *Helichrysum serotinum*, a subspecies of *Helichrysum italicum*, containing 35.57 % of neryl acetate. However, Amrita indicates that *Helichrysum italicum* plant flower top from the region where applicant's plant was obtained, extracted by same distillation method, is used for the very same purposes as in the present invention, i.e., rejuvenating the skin. And there is nothing in the record to indicate that the claimed composition produces unexpected or surprising compared to the prior art that would patentably distinguish itself from the prior art composition and method. In this case, Amrita teaches the efficacy of distilled *Helichrysum italicum* essential oil from Mediterranean region as a skin antiaging agent, antimicrobial and anti-inflammatory agent; Spina teaches using *Helichrysum italicum* essential oil to make an anti-inflammatory, wound healing, and antiseptic composition for scalp thereby

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suggesting a topically suitable and safe amount of essential oil for skin. Given the teaching of the specific functions of the essential oil (i.e., rejuvenation effect) and of a safe amount of the essential oil to topically administrate to the skin, the skilled artisan would have discovered a workable range of the active ingredient by routine experimentations to make an antiaging cosmetic similar to the Amrita products.

**Claims 7 10, 19, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amrita and Spina as applied to claims 1-3, 8, 14-16, 20, 22-24 as above, and further in view of Afriat et al. (US2002/0119954 A1).**

Amrita does not teach the nanospheres formulation of instant claim 7 or the additives of instant claim 10.

Afriat teaches cosmetic composition comprising ascorbic acid, and also teaches that moisturizing active agents, in case of incompatibility with other materials, are incorporated into nanospheres in order to isolate them from each other in the composition. See p. 3-4, [0061]. Essential oils and vitamin E are taught. See instant claim 10.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teaching of Amrita by incorporating *Helichrysum italicum* essential oil and/or vitamin E into nanospheres, as motivated by Afriat, because both inventions of Amrita and Afriat are in cosmetic art, and Afriat teaches that it is well known in cosmetic art to incorporate essential oils or vitamin E moisturizing agent in nanospheres for stability of the composition and separation of the active ingredients

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during the storage. The skilled artisan would have had a reasonable expectation of successfully producing a stable composition comprising *Helichrysum italicum* in nanospheres.

### ***Response to Arguments***

Applicant's arguments filed on April 9, 2008 have been fully considered but they are moot in view of new grounds of rejection.

### ***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605.

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The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/  
Primary Patent Examiner, Art Unit 1611